

Reform of Applications and Appeals Process  
Review of and Response to Consultation  
LSC Corporate Legal Team

21 August 2006

## INTRODUCTION

In late May 2006 the Commission published a consultation paper on a number of proposed changes to our applications and appeals processes. It would be wrong however to suggest that the consultation paper reflected the first time that these proposals were aired.

The core elements of the proposed changes were suggested and initially discussed by the Commission's Review Panel Chair's Working Party. This group was made up of a number of experienced former committee chairs and it was this group that first mooted the idea of replacing committees with single independent reviewers.

The Working Party's proposals were then debated at the 2004 Review Panel Chair's Annual Conference and the proposals set out in the consultation paper were developments of those initial discussions. In addition, before the formal consultation process began, the Commission met with representatives of the Law Society and the Legal Aid Practitioners Group to discuss the proposed changes.

At the same time as issuing the consultation paper to the various representative bodies and interest groups, the Commission also wrote to all of its existing committee members, notifying them of the consultation and seeking their views. We also asked them to complete a questionnaire, which, amongst other things, asked if they were willing to sit as independent Assessors or Adjudicators instead of in committees. Of the responses processed so far, around 80% have indicated their willingness to sit alone rather than in committee. The remaining 20% have not only indicated that they are unwilling to sit alone but many have also indicated that they do not support the proposed changes.

This document sets out our review of the consultation responses as well as discussing the Commission's decision on taking the proposals forward. The key proposed changes are:-

*"The frequency of appeals based on new information being provided and not available to the decision maker has been increasing and is now almost normal procedure"*

David Melville Walker –  
Committee Member

*"The consultation paper reveals a clear failure by its authors to understand the procedure of applying for legal aid. The profit margins on legal aid work are low. Firms do not have the financial ability to spend vast periods with their clients, for no remuneration, putting together a perfect application for legal aid. On our margins, firms can only see their client, at the preliminary stage, for a minimum amount of time, using their experience to elicit what they hope are the relevant facts and put together the legal aid application. It is inevitable that in the majority of cases some salient facts will be omitted. It is extraordinarily useful, on appeal, to be able to ask the applicant pertinent questions about their case."*

The Birmingham Law  
Society

- Implementation of improvements in the application and rejection process to ensure that all relevant information is received before the Commission makes the initial decision
- Implementation of a robust and consistent internal review process to ensure that, once an appeal is lodged, any previous wrong or inappropriate decisions are identified and rectified by the Commission's staff rather than being placed before an appeal body.
- Replacing Costs Committees and Funding Review Committees with single independent adjudicators/assessors
- Removal of the general right of attendance at appeal

Review of the consultation responses suggests that there are four headline questions upon which this document should concentrate, as they appear to be the four key issues in the proposed reform package. It was clear, from all of the consultation responses, that (with some appropriate concerns over the rejection policy) improvements to the application and rejection process, and the creation of a more robust internal review process, were universally supported. Given this the questions which this paper will concentrate on are:-

1. Should single independent assessors replace Costs Committees?
2. Should single independent adjudicators replace Funding Review Committees?
3. Should the general right to attendance be removed?
4. Should assessors/adjudicators be limited to considering only the issues in appeal or should they have all broader powers to consider the matter afresh or to consider

*“Although I agree with the proposals, there are circumstances where I believe a 3 member committee should be retained, in particular for Funding Review Committee applications. However the use of a 3 member committee should be at the discretion of the independent adjudicator, either on application or on the adjudicator's own initiative on the following grounds:-*

1. *There is a point of law involved;*
2. *The issues are of very high value in money terms;*
3. *The issues are complex and /or multiple;*
4. *There are other exceptional circumstances.”*

Graham Dobson –  
Committee Member

*“The Society also believes that the Commission needs to make far more use of e-mail and video conferencing facilities, in order to improve the system and speed up the decision making process”*

The Law Society

issues, which are not subject to the appeal?

## **THE CONSULTATION RESPONSES**

The Commission has received 31 formal and full responses to this consultation.

Detailed responses were received from The Law Society, The Bar Council, The Institute for Legal Executives, The Justices' Clerks Society, Senior Costs Judge Hurst, LAPG, the Advice Services Alliance, the Welsh Assembly and the Birmingham Law Society. The remaining responses were received from individuals or firms who have been involved in the existing appeals process (either as Committee members or as appellants).

### **Should single independent assessors replace Costs Committees?**

Of the consultation responses only 26 specifically answered this question. Of those responses, 81% supported (though some conditionally – see below) the concept of replacing Costs Committees with single independent assessors. 19% did not support the proposal.

A number of the responses made it clear that the support for the proposal was dependent upon there being a residual right of attendance to a three member Committee, particularly in relation to more complex or higher value costs appeals. Some responses suggested that, given the potential impact on the firm of extrapolation or categorisation, consideration by a three-member panel should be retained for all "CCA" costs assessments in respect of controlled work.

The Law Society and the Advice Services Alliance both supported the move to single independent assessors, but only on condition that a further right of appeal accrued to a three member Committee. The Law Society's view was that the vast majority of appeals would be resolved at the independent assessor stage, leaving relatively few to proceed to a three member Committee.

*"Assessment of costs can properly be dealt with by a single assessor and it would be more economic to do so. There is a likelihood that trained costs assessors would assess more consistently..."*

Peter Whitfield –  
Committee Member

*"In our experience in both sitting on costs appeal committees and appearing before them, the issues fall in to 2 forms: Firstly, justification of the work done. Here, in our experience, there has already been an attempt to justify the work on the file. However the responses to questions from the committee members is extremely helpful. Secondly, there are issues of law, in particular the interpretation of costs appeals decisions and Costs Judges decisions. Frequently LSC employees are not fully aware of them and / or misunderstand them. These are issues which can only properly be dealt with at an oral hearing..."*

The Birmingham Law Society

**Should single independent adjudicators replace Funding Review Committees?**

Of the consultation responses only 29 specifically answered this question. Of those responses 52% supported (some conditionally – see below) the proposal to replace Funding Review Committees with single independent adjudicators. 48% did not support the proposal.

The main reason for opposing this proposal, which was mirrored across almost every dissenting response, was the argument that three heads and the resulting ability to discuss and debate issues which that brings, are always better than one. Many of the responses, even those that broadly support the proposal to replace Funding Review Committees with single independent assessors, highlighted the importance of debate when considering complex and difficult issues. A number of the Committee members who responded to the consultation made clear that they valued the ability to discuss issues with their Committee colleagues at the Committee hearings.

The responses that supported the proposal broadly did so on the basis that appeals in specific areas of law would be listed before adjudicators with expertise in that area of law. If this were the case then a number of the respondents recognised that, for the vast majority of appeals, it would not be necessary for the discussions referred to above to take place. However, again, some of those respondents made it clear that three member panels would be appropriate where the issues were unusually complex or high profile.

As with Costs Committees, the support of The Law Society and Advice Services Alliance was based upon there being a final residual right of review to a three member Committee. Again, The Law Society argued that the vast majority of appeals would be concluded at the independent adjudicator stage leaving very few appeals to proceed to three member Committees.

*“Currently funding committee membership comprises members with a variety of experience, and in any particular appeal there may or may not be a member with particular experience in the area of law concerned. Where there is such a member, the other members of the committee will in general defer to their view. Thus this form of adjudication is ripe for replacement by a single adjudicator provided that that person is a specialist in the area of law to which the application relates. Adjudication by specialist adjudicators is likely to achieve a greater degree of consistency of decision-making than the present committees”*

LAPG

***Should the general right of attendance be withdrawn?***

Of the consultation responses, 29 sought to specifically answer this question. Of the responses, 38% supported the removal of the general right of attendance (either wholly or partly) and 62% did not support the proposal.

It seems clear from the majority of responses that, in considering the question of the right of attendance, most respondents had in mind attendance before Funding Review Committees rather than Costs Committees (although a number of respondents did argue that, particularly in relation to CCA costs appeals, the right of attendance for firms should remain).

It is fair to say that this appears to have been the most contentious issue within the consultation responses. The Law Society took the view that, at the single independent assessor at review stage, it should not normally be necessary for solicitors to attend but that the right of attendance should be maintained where the client is acting in person (i.e. without the assistance of legal representation) and particularly where there is a dispute between the client and the solicitor or where, for instance, the legal aid certificate has been revoked and the client therefore had a potential personal liability for costs. It is however clear from The Law Society's response that this position is premised on the proposal that, after the adjudicator/assessor stage, there would be right to appeal to a three member Committee at which attendance was allowed (both for firms and individuals).

A number of the responses from current LSC Committee members made clear that their concern was that attendance should remain as it was often not until the client appeared before the Committee and explained the nature of their proposed case that the Committee were apprised of all the information necessary for them to make the appropriate funding decisions. Committee members were not surprisingly concerned that removal of the right of attendance might have the

*"I have strong doubts that the quality of decision making will improve with single adjudicators compared with the various committees that sit"*

Derek Inkpin –  
Committee Member

*"Committees undoubtedly benefit from the right of attendance. People sometimes do not express themselves clearly on paper, just as courts prefer oral evidence"*

Derek Inkpin –  
Committee Member

*"In my experience of sitting on committees relatively few decisions are fundamentally affected by oral submissions whether from a solicitor or applicant in person unless something completely new is raised which does not appear in the papers."*

Michael Kewish –  
Committee Member

effect of denying individuals, in the funding review context, the opportunity of persuading the Commission to grant legal aid where their solicitors had previously failed to persuade the Commission to do so.

In addition concerns were raised with regards to whether an appeals process, lacking an automatic right of attendance, would be compliant with Article 6 of the European Convention on Human Rights and further whether it would demonstrate the essential elements of fairness and transparency allowing for justice not only to be done but to be seen to be done.

***Should the assessor/adjudicator be limited to considering only the issues, which are subject to appeal, or should they be able to look at the matter afresh or consider additional issues?***

Of the consultation responses 22 sought to specifically answer this question. Of those responses 91% supported the proposal that the Assessor / Adjudicator should be entitled to look at additional items or to consider the matter afresh and 9% maintained that the Assessor / Adjudicator should be limited only to considering those issues, which were subject to appeal.

However support for this concept was clearly only given on the basis that any new issues identified by the assessor/adjudicator on appeal would either be referred back to the Commission for a further decision (giving right of a further right of appeal) or would lead the adjudication or assessment to be adjourned so that the adjudicator or assessor could put those matters to the Appellant giving them ample opportunity to address the new issues raised by the Assessors or Adjudicators.

Given the near universal support for allowing Assessors / Adjudicators the discretion to look at the additional items, and given that any concerns raised in the consultation responses appear to be met by the proposals for adjournment and referral back as set out in the consultation paper, this paper will not discuss this issue further.

*“It must be in the public interest for the assessor to have the power to undertake a de novo assessment; logic would say that if a decision has been made in error, it should be corrected. But if the assessment is to be done on the paper, the appellant must be given sufficient particulars of the new issue and time to respond.”*

The Bar Council

## **THE COMMISSION'S RESPONSE**

The Commission found all the comments made in the consultation responses extremely helpful however it seemed that some of the responses set out concerns that had already been dealt with in the consultation paper (for instance ensuring that the Assessor / Adjudicator has a discretion to allow attendance or refer the matter to a committee in the appropriate circumstances).

Having considered all of the responses, the Commission is of the view that the reform package should proceed.

### **Replacing committees**

What has been clear from the responses, both in respect of Costs Committees and indeed Funding Review Committees, is that a case can be made for the removal of three member Committees and their replacement with single independent assessors or adjudicators.

The rationale behind these proposals seems to have been accepted by The Law Society, albeit on a conditional basis. It seems clear from The Law Society's response to this consultation that they would anticipate the vast majority of appeals to be appropriately resolved through the single independent adjudicator or assessment process with a smaller number of appeals proceeding to their proposed final tier of three member Committee review. It seems to the Commission that if a further right of appeal to a three member committee exists as a right, then a large number of appellants will pursue it, regardless of the decision of the Assessor or Adjudicator. This is especially so given that there are few adverse costs implications of doing so.

It seems to the Commission that those appeals would be matters where the reviews were unusually complex or high profile or alternatively where the Appellants could not adequately or properly make

*"I think that the right of attendance should be retained ... sometimes a case can look fairly strong on the paper but can turn out to be pretty hopeless when verifying issues with an Appellant but on the other hand cases that do not look very strong on paper become very much stronger by direct contact with the appellant."*

Derek S Reed –  
Committee Member

*"For costs committees, the Society believes that the proposed system of appeal to a single adjudicator (or the papers, or orally) would result in resolution of the vast majority of appeals. It would only be in rare cases that a three member committee would be required."*

The Law Society

*"It will speed up decisions and ensure necessary expedition"*

SCCO Costs Judges

their case on the papers. These are, of course, the very circumstances in which the Commission anticipates guiding its assessors or adjudicators to refer matters to a three member Committee or indeed to allow attendance. This was made clear in the consultation paper.

Given this, it is not clear why referral to a three member Committee or allowing attendance should be a right at the end of a linear appeals process, rather than a discretion to be exercised by the Assessors, based on the information before them, at the appropriate point within the appeals process.

Based upon the responses to the consultation, the Commission is satisfied that it would be appropriate to replace both Costs Committees and Funding Review Committees with independent adjudicators or assessors. This is on the basis that those assessors and adjudicators are appropriately skilled and trained and that they have a discretion to refer matters to a three member panel in appropriate circumstances.

### ***The general right of attendance***

The Commission recognises that the removal of the general right of attendance is more complex and contentious. It is fairly evident that the proposed removal of the general right of attendance has caused significant concern amongst the respondents to the consultation and for the purposes of this analysis the Commission proposes to treat The Law Society's response (and that of the ASA, which mirrors The Law Society's response) as unresponsive on the basis that the Commission does not propose to create a final tier of appeal to an attended three member Committee. Thus the question the Commission must ask is, by removing the general right of attendance, will individuals be denied access to justice or a fair hearing?

In relation to Costs Committees the reality is that all of the attendance is on the part of solicitors' firms (either in relation to individual bill assessment appeals or alternatively in relation to CCA appeals). It is clear from provisions of the service provider's

*"It is essential that the immediate right to an oral hearing is retained in all cases where the appellant is the client and not the solicitor. Clients will be far less able to make detailed written representations than solicitors. This will include cases where the client disagrees with the solicitor's view of the case; where discharge has taken place on the solicitor's recommendation, but the applicant disagrees with it; where certificates are discharged or revoked for non disclosure of means; where certificates are discharged for unreasonable conduct, and where certificates are discharged upon request to change solicitors being refused etc."*

The Law Society

contract with the Commission that, in relation to CCA appeals, all work (and the reasonableness of that work) must be evidenced on the file at the time of the claim. Given this it is unclear why it should be necessary for solicitors to attend at appeal hearings to put their case when, in fact, it should be made on the files in any event.

Notwithstanding this, there does exist a right for service providers to put their case in writing and the Commission is of the view that, given the expertise of our Quality Assured contracted service providers this additional opportunity to make written representations should be sufficient to ensure that they are able to properly put their case. Of course, where there is particular complexity or the firm believes that it cannot properly put its case on the papers then there will remain a residual right for the assessor to contact the provider with additional questions or indeed to direct that the provider be allowed to attend at a formal attended appeal hearing.

In relation to FRCs it is necessary to consider them in a slightly broader context. The function of the Funding Review Committee is to consider the decision of the Regional Director. That decision would have been based upon the application of the Funding Code Criteria, Procedures and Guidance to information provided to the Regional Director, on behalf of the client, by a Quality Assured contracted provider of publicly funded legal services. Given this it should be neither necessary or indeed appropriate for an unrepresented client to have to attend at the Legal Services Commission's offices to put their case. This is not least (as is clearly put in a number of responses to the consultation) because unrepresented clients are highly unlikely to fully appreciate the complexity of the Funding Code or the issues which need to be addressed.

Many of the consultation responses highlight these difficulties whilst ignoring the underlying and unavoidable fact that it is the obligation of a solicitor properly acting for his client in the legal aid scheme to make that client's case appropriately on the application form for funding. This is particularly so

*“The abolition of the right to an oral hearing has the potential to act as a detriment to litigants in person who are less likely to understand the points that should be made, or to make the case on paper, than would be a solicitor. They may be illiterate. If such a person appears in person before a committee, there is likely to be a greater prospect that the real issues in the appeal emerge, probably at the instigation of the committee.”*

The Bar Council

in an environment in which only expert and Quality Assured suppliers, in specific categories of law, are entitled to make those applications for and on behalf of their Clients.

The Commission's view is that the appropriate response to this issue is the improvement of the applications process, the improvement of the Commission's guidance on the Funding Code, the delivery of appropriate training to suppliers and a more investigative internal review and review process in which both the internal reviewer and independent adjudicator have the right to contact either the firm or the applicant (client) for additional information.

However, of course, there will be circumstances in which it is much more likely that attendance will be necessary and appropriate. It does not however follow that attendance will be necessary in all of those cases, merely that the adjudicator or assessor should give more weight to considering whether or not an attended hearing is appropriate. The types of circumstances in which attendance might be more appropriate are as follows:-

1. Where the legal aid certificate has been revoked.
2. Where there is a dispute between the solicitor and client with regard to whether the case continues to meet the Funding Code Criteria.
3. Where it is apparent either to the internal reviewer or to the assessor that the appellant has not been capable of putting their case on the papers.
4. Where it appears to the assessor that the determination of the appeal rests on the answers to a number of questions which the appellant has not addressed in the documentation and which cannot be addressed by contacting the appellant in writing, by e-Mail or by telephone.
5. Where the appellant has sought attendance and where the assessor or adjudicator agrees, based on what the

*"In practice, about one third of those attending were successful in their appeals and that was because they presented the committee with new evidence which had not been provided as it should have been, by their solicitors. I would retain the right of attendance at the discretion of the Adjudicator in those cases where he feels the papers do not contain all the evidence needed."*

John Matthews –  
Committee Member

appellant says, that attendance would be appropriate.

Provided there is a residual right for the adjudicator or assessor to require attendance (or indeed allow attendance) in the circumstances set out above, the Commission is of the view that individual applicants will not be denied access to justice simply by the removal of the automatic right of attendance.

A number of responses raised concerns as to whether the proposed procedure would be Article 6 compliant. The Commission asked specialist counsel for a health-check of its determination and appeal processes on the introduction of the HRA 1998. Counsel advised that generally, the work of Funding Review Committees and Costs Committees does not engage Article 6. If, in any case, it can be argued that the work of a committee is “the determination of a civil right” (in the wording of Art 6(1)), the Court of Appeal has made it clear that a process of this kind will be Convention compliant as long as judicial review is available.

*“It is assumed that Article 6 ECHR has been considered. If this is not a problem it is felt on balance that there should be no right to attend.”*

SCCO Costs Judges

The real question is whether the proposed system is fair and proper in accordance with the normal principles of public law. We believe that the proposed system is fair, in that it gives both parties ample opportunity to put their case (initially in writing and ultimately in person where justice so requires), is independent of the LSC (as the Assessors / Adjudicators will continue to be drawn from the existing review panel which is self appointing and self governing) and is governed by rules and principles which require fair and proper consideration to be given and for all decisions to be fully justified with detailed reasons. We believe that the proposed system is no less fair, independent and robust than the current system and indeed that the new system should lead to a marked improvement in the quality of decisions and the reasons given for those decisions.

The Commission hopes that in setting the criteria for attendance it does not create a situation in which satellite litigation, regarding adjudicators’ or assessors’ decisions not to allow oral hearings,

arises. Whether this occurs will ultimately depend, in no small part, on the other improvements that the proposed reforms are anticipated to bring. It is not anticipated that these reforms will lead to an increase in applications for judicial review against the Commission.

There is, of course, an argument that appeals dealt with out of sight of the appellant and on the papers are not perceived to be as clear or transparent as appeals dealt at an open hearing where the appellant has a right of attendance and to make representations. On the face of it, this argument seems attractive, however it is the Commission's view that provided it properly explains to all appellants the process to be followed and properly outlines the independence of the reviewers, appellants' faith in the appeals process should be unchanged by the removal of the general right of attendance.

These proposals should lead to a general increase in the quality of Commission decisions and decision letters (both at internal review and final review stage) and an increase in speed with which appeals are dealt with. Most newcomers to the legal aid system will have no expectations in relation to the review or appeal mechanism where they, or their solicitors, disagree with one of the Commission's decisions. It is the Commission's view that the existence of a paper based independent expert review mechanism should be sufficient to satisfy all concerned and that where it is not, a balance must be struck between the costs of the proposed process and the additional costs of maintaining the system of attended hearings.

### **Saving costs**

On the issue of costs savings a number of the consultation responses have suggested that these proposals are based entirely around saving money. The Commission makes clear that this is not the case. These proposals are intended to speed the appeals process and ensure that appeals are dealt with by specialist independent assessors or adjudicators, properly qualified and trained, who by

*"May I say at the outset that the Consultation appears entirely grounded in the Commission's desire to save money and to in effect reduce the independent review process, which is currently such an essential part of both the Application and Costs Appeals process."*

Nigel J Ford –  
Committee Member

the nature of the appeals process are required to take ownership of their appeal decisions.

It would be wrong however to suggest that costs savings are not one of the drivers of this reform package. It is likely that moving to the proposed system will save £500,000 to £600,000 per annum from the Commission's administrative budget. The Commission's view is that it is incumbent upon this Body, as it is with any Public Body, to achieve savings of public funds where possible (provided that making those savings does not adversely affect access to justice). It is our view that implementation of these proposals will not adversely affect access to justice and therefore the Commission considers it wholly appropriate to make the changes and thus the savings suggested.

*"...the vast majority of members of the Review Panel have the appropriate experience to deal with matters"*

Nigel J Ford–  
Committee Member

### **Qualifications for Assessors / Adjudicators**

There were various suggestions regarding the level of experience / qualification of Assessors and Adjudicators though many of the responses suggested that the requirements should mirror those for holding judicial office, namely 7 years post qualification experience.

The current review panel arrangements require that a review panel member have at least 3 years legal aid experience since qualifying. They do not specify a minimum PQE period. In addition the application must not have any adverse professional body findings against them.

The Law Society suggested that barristers should not be Assessors or Adjudicators as they would not have experience of working under an LSC contract and a number of responses have suggested that only representatives from contracted legal aid providers should be entitled to sit.

The Institute of Legal Executives make clear that Fellows of that Institute should also be eligible for appointment.

*"It is essential that adjudicators involved in the process are sufficiently experienced. The Society agrees that adjudicators should have judicial experience at Deputy District Judge level, or equivalent. Ideally their experience of the subject area should match the expertise of the solicitor bringing the appeal although it is appreciated that this may not always be possible"*

The Law Society

The Commission's view is that Assessors and Adjudicators should be practising solicitors, barristers or FILEX with at least 7 years PQE with at least 3 years direct experience of legal aid work. In addition, from April 2006, it will be mandatory for each Assessor or Adjudicator to attend at 1 full day of relevant training, run by the Commission, during every 2-year period.

Once the Commission has a better idea of appeal volumes and thus the number of required Assessors / Adjudicators we will re-visit this issue. To do so we will begin discussions with the various Regional Review Panel Chairs.

*"At least ten years experience as an authorised litigator in the field of law that is relevant, together preferably with some judicial experience."*

SCCO Costs Judges

### ***The Costs Appeals Committee***

Very few responses commented on the proposals in respect of the Costs Appeals Committee and those that did agreed with the proposal but expressed concerns that removal of the Costs Committee permission stage might lead to an increase in the number of applications made.

The Commission expects that this may be the case but given our intention to improve the relevant guidance on costs assessment it is anticipated that this increase in work will be temporary and manageable and will give the Commission's head office greater opportunity to consider the costs assessment issues which concern all of those involved in the process.

*"I would like to see the LSC provide training for adjudicators in both costs and funding issues, in relevant law, and in decision making, adjudication and judgment writing"*

Graham Dobson—  
Committee Member

### ***Other issues***

The Law Society response included a suggested revised timetable for dealing with Funding Reviews. The Commission will consider whether this timetable is achievable as a target for processing applications and, if it is, will adopt it.

## CONCLUSION

In conclusion, the Commission is of the view that the proposed reform package should go ahead and that the changes should be implemented in October 2006. The key approved changes will be as follows:

- Commencement of an ongoing process to review application forms, decision letters and LSC guidance so as to improve initial decisions and the ability of appellants to make appropriate appeals;
- Issuing new guidance to all Commission decision makers reminding them to give full and sufficient reasons for all decisions;
- Creation of a formal and more robust internal review process in both costs appeals and funding reviews;
- Costs Committees will be replaced by Single Independent Assessors (“Assessors”);
- Funding Review Committees will be replaced by Independent Funding Adjudicators (“Adjudicators”);
- Costs Appeals will only be listed before Assessors with experience and / or training in costs assessment;
- Funding reviews will be listed before Adjudicators with experience and / or training in the relevant area of law or Funding Code criteria;
- There will be no general right of attendance before either Assessors or Adjudicators;
- Neither Assessors nor Adjudicators will be limited to considering just the issues raised in the appeal documentation. Both will have a broader jurisdiction to look at the whole matter afresh but only on the basis that and new issues raised for the first time by the

*“...it is our view that the proposed changes are no more than a crude attempt to overcome chronic failings by the LSC and its staff. Before considering any changes to the appellate processes, the LSC should address those failings”*

The Birmingham Law Society

*“Proposed changes appear to be sound, and should be put into practice as soon as possible”*

SCCO Costs Judges

Assessor or Adjudicator will be put to the Appellant for comment. This will be achieved either by adjourning consideration so that the Assessor / Adjudicator can personally realise the new issues with the appellant (either by phone, e-mail or letter) or by the Assessor / Adjudicator referring the matter back to the LSC with a recommendation that a new decision be made. Any new decision will, of course, carry with it a new right of appeal;

- Both Assessors and Adjudicators will have a discretion to direct that matters to be listed before 3 member committees to allow an attended hearing where the circumstances so require – the exact circumstances will be discussed both with those consultation respondents who expressed views and with the Commission’s Regional Review Panel Chairs;
- The Costs Appeals Committee procedure will be amended as set out in the consultation paper. This will mean that applications for certification of Points of Principle of General Importance can be made at any time during the costs appeals process. The Commission’s legal director will initially consider applications and, if she considers it appropriate for them to proceed, they will be put to the Costs Appeals Committee. If she does not consider it appropriate for a matter to proceed then her decision to refuse permission will be verified by the chair to the Costs Appeals Committee.

*“In my view. The present system is cumbersome and inefficient. The proposed changes bring this form of judicial exercise (which is what it is) in line with ... District Judge jurisdiction, which in many ways has a lot of similarities.”*

John Matthews –  
Committee Member